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Bangkong ak Puan (l) v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–347 OF 2010
ABU SAMAH, CLEMENT SKINNER AND AZIAH ALI JJCA
18 OCTOBER 2012

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Criminal Law — Murder — Defence — Grave and sudden provocation — Appellant convicted of murdering wife with knife — Weapon used and injuries inflicted on deceased showing callous disregard for deceased's life — Brutal manner in which appellant retaliated not proportionate to provocation — Reasonable man would not have acted as appellant did

D

Criminal Law — Murder — Penal Code — Conviction under s 302 of the Penal Code — Appeal against conviction — Appellant convicted of murdering wife with knife — Whether discrepancies in evidence of prosecution witnesses — Whether possibility of third party committing the crime — Evidence pointing conclusively to guilt of appellant — Weapon used and injuries inflicted on deceased showing callous disregard for deceased's life — Whether intention to cause death established

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The appellant, the deceased and their son lived together with the deceased's mother ('PW3') and PW3's husband (PW4). On 5 August 2007 the appellant and the deceased had an argument resulting in the appellant leaving the house. When the appellant later returned, the deceased had asked for a divorce and they quarreled again. PW4 said that as he and PW3 were about to sleep, they heard the deceased calling for PW3 from her bedroom. PW3 saw a knife embedded on the back of the deceased's shoulder. PW4 pulled out the knife and put it on the floor. PW4 then saw the appellant stabbing his own stomach with two knives. PW3 and PW4 ran away in fear. The deceased's younger sister ('PW5') said she saw both the appellant and the deceased in the deceased's bedroom covered with blood. PW5 said when she tried to save the deceased, the appellant suddenly woke up and stabbed the deceased's neck once with a kitchen knife. The appellant then stabbed his own stomach. The deceased's brother ('PW6') testified that he saw the appellant on the deceased's body wiping a knife on the deceased's chest. The appellant put up the defence of grave and sudden provocation because the deceased allegedly stabbed him first. The learned trial judge rejected the defence of grave and sudden provocation and found the appellant guilty of the murder. He was convicted and sentenced to death. The appellant appealed against his conviction and sentence. Counsel

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for the appellant submitted that the learned trial judge had failed to consider the discrepancies between the evidence of PW3 and PW4.

Held, dismissing the appeal and affirming the conviction and sentence:

(1) The learned judge had considered each discrepancy raised and had evaluated the testimonies of the relevant witnesses and the circumstances at the material time. It was never suggested to the prosecution witnesses that it was some other third party who had attacked the deceased. There was sufficient evidence to support the finding of the learned trial judge that the possibility of a third party committing the crime did not exist. On the evidence it was clear that the only persons in the bedroom when the deceased was attacked were the appellant and the deceased and no one else. There was ample evidence adduced by the prosecution to show that it was the appellant alone who had inflicted the injuries on the deceased. At the end of the prosecution case the learned trial judge had conducted a maximum evaluation of the evidence adduced for the prosecution and had considered the correct principles in ruling that the prosecution had made out a prima facie case against the appellant. The learned judge had not erred in calling on the appellant to enter his defence (see para 12).

(2) The appellant alleged that the deceased stabbed him first and it was this act of grave and sudden provocation that purportedly caused him to lose his self-control and retaliate. Even if this allegation was true, the brutal manner in which the appellant retaliated was not proportionate to the provocation. Having gravely injured the deceased, there was no reason for the appellant to inflict the other fatal injuries. A reasonable man placed in the situation and circumstances as the appellant was placed would not have acted as the appellant did. The defence of grave and sudden provocation was a mere afterthought *Che Omar bin Mohd Akhir v Public Prosecutor* [2007] 4 MLJ 309 referred (see para 16).

(3) The evidence pointed conclusively to the guilt of the appellant. The manner the deceased was attacked, the weapon used and the multiple injuries inflicted on the deceased by the appellant showed a callous disregard for the deceased's life and that the appellant intended to cause the death of the deceased (see para 17).

[Bahasa Malaysia summary

Perayu, si mati dan anak lelaki mereka tinggal bersama dengan emak si mati ('PW3') dan suami PW3 ('PW4'). Pada 5 Ogos 2007 perayu dan si mati telah bergaduh dan mengakibatkan perayu meninggalkan rumah. Apabila perayu kemudiannya pulang, si mati meminta cerai dan mereka bergaduh sekali lagi. PW4 mengatakan bahawa apabila dia dan PW3 baru sahaja hendak tidur, mereka terdengar si mati memanggil PW3 daripada bilik tidurnya. PW3 ternampak sebilah pisau terpacak di belakang bahu si mati. PW4 menarik

keluar pisau dan meletakkannya di atas lantai. PW4 kemudiannya melihat perayu menikam perutnya sendiri dengan dua bilah pisau. PW3 dan PW4 berlari keluar ketakutan. Adik si mati ('PW5') mengatakan dia ternampak perayu dan si mati dalam bilik tidur si mati bergelumang dengan darah. PW5 berkata apabila dia cuba untuk menyelamatkan si mati, perayu tiba-tiba bangun dan menikam leher si mati sekali dengan sebilah pisau dapur. Perayu kemudiannya menikam perutnya sendiri. Abang si mati ('PW6') memberi keterangan bahawa dia melihat perayu di atas badan si mati mengesat sebilah pisau pada dada si mati. Perayu membuat pembelaan provokasi dari bangkitan marah yang besar dan mengejut kerana si mati dikatakan menikamnya terlebih dahulu. Hakim perbicaraan yang bijaksana menolak pembelaan provokasi dari bangkitan marah yang besar dan mengejut dan mendapati perayu bersalah atas kesalahan membunuh. Dia disabitkan dan dijatuhi hukuman mati. Perayu merayu terhadap sabitan dan hukumannya. Peguamcara bagi pihak perayu menghujah bahawa hakim perbicaraan yang bijaksana gagal untuk mempertimbangkan percanggahan antara keterangan PW3 dan PW4.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Hakim yang bijaksana telah mempertimbangkan setiap percanggahan yang dikemukakan dan menilai keterangan-keterangan saksi-saksi relevan dan keadaan-keadaan pada masa material. Ia tidak pernah dicadangkan kepada saksi-saksi pendakwaan bahawa ada pihak ketiga yang menyerang si mati. Terdapat keterangan mencukupi untuk menyokong dapatan hakim perbicaraan yang bijaksana bahawa kebarangkalian pihak ketiga melakukan jenayah tidak wujud. Berdasarkan keterangan, adalah jelas bahawa satu-satunya orang di dalam bilik tidur semasa si mati diserang adalah perayu dan si mati dan tiada lagi orang lain. Terdapat keterangan mencukupi dikemukakan oleh pendakwaan untuk menunjukkan bahawa hanya perayu seorang yang mengakibatkan kecederaan ke atas si mati. Pada penutup kes pendakwaan hakim perbicaraan yang bijaksana telah menjalankan penilaian penuh keterangan yang dikemukakan untuk pendakwaan dan mempertimbangkan prinsip-prinsip yang betul dalam memutuskan bahawa pendakwaan telah membuktikan kes prima facie terhadap perayu. Hakim yang bijaksana tidak terkhilaf dalam memanggil perayu untuk memasukkan pembelaannya (lihat perenggan 12).

(2) Perayu mendakwa bahawa si mati menikam dia terlebih dahulu dan ini merupakan satu tindakan provokasi dari bangkitan marah yang besar dan mengejut yang dikatakan mengakibatkannya hilang kawalan diri dan membalas. Meskipun sekiranya dakwaan ini adalah benar, cara kejam di mana perayu membalas tidak bersekadar dengan provokasi. Selepas mencederakan si mati dengan serius, tiada alasan untuk perayu mengenakan kecederaan maut yang lain. Seorang lelaki yang munasabah diletakkan pada situasi tersebut dan keadaan seperti mana perayu berada

tidak akan bertindak seperti mana yang dilakukan oleh perayu. Pembelaan provokasi dari bangkitan marah yang besar dan mengejut hanya merupakan sesuatu yang difikirkan kemudian *Che Omar bin Mohd Akhir v Public Prosecutor* [2007] 4 MLJ 309 dirujuk (lihat perenggan 16).

(3) Keterangan menunjukkan secara muktamad kepada kebersalahan perayu. Cara si mati diserang, senjata yang digunakan dan kecederaan berganda yang dikenakan ke atas si mati oleh perayu menunjukkan perayu tidak mempedulikan nyawa si mati dan bahawa perayu berniat untuk mengakibatkan kematian si mati (lihat perenggan 17).]

Notes

For cases on defence, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1480–1508.

For cases on Penal Code, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1531–1534.

Cases referred to

Che Omar bin Mohd Akhir v PP [2007] 4 MLJ 309; [2007] 3 CLJ 281, FC (refd)

Legislation referred to

Penal Code s 302

Appeal from: Criminal Trial No 45–15 of 2008 (High Court, Sibu)

Wit ak Malang (Wit & Co) for the appellant.
Awang Armadajaya bin Awang Mahmud (Cyril Das with him) (Deputy Public Prosecutors, Attorney General's Chambers) for the respondent.

Aziah Ali JCA (delivering judgment of the court):

[1] The Sibu High Court had found the appellant guilty of the murder of his wife, one Dara bt Suhaili ('the deceased') on 9 August 2007 at about 11.05pm. He was convicted and sentenced to death in accordance with s 302 of the Penal Code. The appellant appealed against his conviction and sentence. By a unanimous decision we dismissed his appeal and affirmed his conviction and sentence.

SALIENT BACKGROUND FACTS

[2] The appellant, the deceased and their son lived together with the deceased's mother PW3 Aminah bt Gending, PW3's husband PW4 Mawa ak Jalin and the deceased's younger sister Shakilah in a house belonging to PW3 on Lot 246. There were two other houses on the same lot. One house was

occupied by the deceased's younger sister PW5 Salfarina bt Suhaili, her husband PW7 Raznan bin Jerien and their two children. The other house was occupied by the deceased's brother PW6 Mohamad @ Mathew bin Abdullah.

[3] The facts showed that on 5 August 2007 the deceased had attended a 'kenduri' at a neighbour's house alone without the appellant who had refused to go with her. At about 10pm the appellant became displeased when the deceased had not returned home. He called out to her to return home and when she did not, the appellant called again in a loud voice. According to PW4 the appellant said in Iban 'Come home, you useless woman! Prostitute!'. When the deceased came home, a heated quarrel ensued between them. The appellant packed his clothes and left the house saying that he did not want the deceased anymore. It was then about midnight. However on 8 August 2007 at about 3pm the appellant returned home but the deceased refused to take him back and wanted a divorce. They quarreled again and the deceased did not join the family for dinner. PW4 called the deceased's uncle at about 8pm to help settle their problem and the appellant and the deceased were advised to go to the Shariah Court the next day to settle their dispute. Thereafter everybody retired to their rooms to sleep.

[4] PW4 said that as he and PW3 were about to sleep, they heard the deceased calling for her mother PW3 from her bedroom which had no door. The entrance to the bedroom was covered only by a curtain. Both PW3 and PW4 went to the deceased's room. The deceased called out to PW3 in Iban 'Mum, help me'. PW3 saw a knife without a handle embedded on the back of the deceased's shoulder. PW4 pulled out the knife and put it on the floor. The deceased then fell face down onto the floor. PW4 said that after he pulled out the knife and put it on the floor, he turned back and saw the appellant stabbing his own stomach with two knives. PW4 ran away because he was afraid. PW3 also saw the appellant coming from the kitchen holding a knife in each hand. Feeling fearful she too ran away with her grandson. At that time the deceased was lying motionless on the floor. Both PW3 and PW4 ran downstairs to the ground floor.

[5] PW3 called out to PW5 for help. PW5 said she saw both the appellant and the deceased in the deceased's bedroom. Both were covered with blood. Both were lying down on the floor. PW5 said she tried to save the deceased by pulling her left hand but the appellant suddenly woke up and stabbed the deceased's neck once with a kitchen knife. The appellant then stabbed his own stomach. When the appellant dropped the knife, PW5 took the knife and went downstairs and washed both her hands which were covered in blood and the knife. She then heard someone asking her to throw the knife away, so she went upstairs and threw the knife onto the verandah. She then went downstairs again. Later when her brother PW6 arrived she went upstairs with him. Not

long after both she and her brother PW6 came downstairs she heard something falling from the verandah and she saw the appellant lying face down on the ground.

[6] PW6 testified that his brother-in-law PW7 had come to ask him to go upstairs of his mother's house because the deceased had been killed. He ran to his mother's house and went upstairs followed by PW7. In his evidence PW7 said he went up to the door of the deceased's bedroom and he saw both the appellant and the deceased covered in blood. The deceased was lying face up motionless while the appellant was lying face down. He was there for only 1–2 minutes and immediately went downstairs again to call the police.

[7] According to PW6 on entering the deceased's bedroom he saw the appellant holding a knife. The appellant's shirt was covered in blood. He saw a lot of blood on the deceased's stomach. She was still breathing but she was motionless. Both the appellant and the deceased were on the floor. He also saw his sister PW5 in the room. PW6 then went downstairs and asked his stepfather PW4 and his uncle to start the car because he wanted to take the deceased to the hospital. Then PW5 came down and told him that the deceased was dead. PW5 also told him that she saw the appellant stabbed the deceased's neck. He then went back upstairs and saw the appellant on the deceased's body wiping a knife on the deceased's chest. He noticed that the deceased was no longer breathing. He then went downstairs because he said he knew that he could not save the deceased anymore. While he was downstairs he heard the sound of somebody running upstairs. He then saw the appellant jumped from the verandah and fell face down on the ground.

[8] The investigating officer ('IO') PW15 testified when he arrived at the scene he went to the deceased's room and saw the deceased on the floor covered in blood. She was not breathing. In the room he saw a knife without a handle (exh E1) on a stool and the knife handle (exh E2) on the floor. He swabbed the blood stains on the knife (exh E1(a)). He also labeled the knife handle (exh E2) and swabbed the blood stains (exh E2(a)). On the verandah PW15 also found a blood stained knife (exh E5). Another knife found on the verandah was also labeled (exh E6). He also took a swab of bloodstains of the appellant who was lying unconscious on the ground covered with blood. In the living room PW15 found one fold knife and a small towel (exh E12) with blood stains (exh 12(a)). Then both the appellant and the deceased were taken to Sibu General Hospital. The deceased was taken to the mortuary while the appellant was admitted to the ward.

[9] The post-mortem on the deceased was performed by PW16 Dr Savier Selva Suresh who prepared the post-mortem report (exh P45). PW15 noted six

external injuries over the deceased's body as follows:

(a) stab injury over front of the neck. Upon dissection of the neck region PW15 found the windpipe was cut;

(b) stab injury over the right chest which extended to the liver;

(c) stab injury over the right side of the upper abdomen but this injury did not injure any internal organ;

(d) stab injury over middle of the abdominal region which together with injury No 2 injured the deceased's liver. The abdominal cavity was filled with fluid blood;

(e) incised wound over back of left hand and left index finger; and

(f) stab wound over the back of left chest. Upon dissection of the chest cavity PW15 found this wound had penetrated into the right lung and the chest cavity was filled with fluid blood.

[10] According to PW15 injuries No 1–2, 4 and 6 were fatal in nature especially injury No 1 which was highly fatal. The cause of death was stab injury to the neck, chest and abdomen by sharp cutting weapon. The possible weapon was any sharp cutting weapon such as a knife. With all these injuries PW15 testified that chances of survival were remote. These injuries were sufficient in the ordinary course of nature to cause the deceased's death.

[11] The learned trial judge found that there was credible evidence which amply showed that it was the appellant who inflicted the fatal injuries on the deceased and the prosecution had proved a prima facie case against the appellant. The learned trial judge found that the appellant had intentionally inflicted the injury to the neck which was so deep as to cut the deceased's windpipe. Her Ladyship found that this injury inflicted at a vital part of the body showed that not only did the appellant intended to cause the deceased's death but he also knew that such bodily injury was likely to cause death. The learned judge found no basis for the suggestion by the defence that there was a likelihood of the existence of another person who could have committed the offence. The appellant was thereupon called to enter his defence.

[12] Before us learned counsel for the appellant submitted that the learned trial judge had failed to consider the discrepancies between the evidence of PW3 and PW4. It was submitted that this discrepancy rendered their evidence unreliable and unworthy of belief. We had perused the grounds of judgment of the learned judge. We found that, contrary to learned counsel's submissions that the trial judge had failed to consider the discrepancies raised, the learned judge had considered each discrepancy raised and had evaluated the testimonies of the relevant witnesses and the circumstances at the material

time. We found no merit in counsel's submissions on this issue. Similarly the learned trial judge had considered the submission by the defence that the presence of foreign source of bloodstain on the cloth line marked E10 had cast doubt on the prosecution case and that there was a reasonable likelihood that another person could have committed the offence. The learned trial judge found that the testimonies of PW3, PW4, PW5, PW6 and PW7 that they saw the appellant in the deceased's bedroom were never challenged. In fact it was never suggested to the prosecution witnesses that it was some other third party who had attacked the deceased. We find that there was sufficient evidence to support the finding of the learned trial judge that the possibility of a third party committing the crime did not exist. On the evidence it was clear that the only persons in the bedroom when the deceased was attacked were the appellant and the deceased and no one else. In our considered view there was ample evidence adduced by the prosecution to show that it was the appellant alone who had inflicted the injuries on the deceased. There was no evidence to suggest that some other person was responsible for the injuries inflicted on the deceased. There was no doubt that the injuries inflicted, in particular the injury to the throat which cut the deceased's windpipe, was fatal. We find that at the end of the prosecution case the learned trial judge had conducted a maximum evaluation of the evidence adduced for the prosecution and had considered the correct principles when Her Ladyship ruled that the prosecution had made out a prima facie case against the appellant on the offence charged. Thus we find that the learned judge had not erred in calling on the appellant to enter his defence.

[13] The appellant put up the defence of grave and sudden provocation because the deceased allegedly stabbed him first. The appellant testified that it was the deceased who first stabbed him in the stomach with a small knife. He felt angry and took the knife and stabbed her. The deceased screamed and fell face down. He then went to the kitchen and took two knives and went back to the bedroom and slashed the deceased's neck. He then left the bedroom and stabbed himself and slashed his neck. Then he threw the knives and ran to the corridor. He lost control and fell down unconscious. In cross-examination the appellant admitted that he first stabbed the deceased on her back before stabbing her stomach and neck. However he said that it was because the deceased had stabbed him first in the stomach. He denied that his evidence was a fabrication. He denied that he intended to kill the deceased. It was submitted before the learned trial judge that the appellant lost control by the grave and sudden provocation by the deceased.

[14] The prosecution had submitted that the alleged provocation by the deceased was never raised during the prosecution case and was an afterthought and fabrication. The learned trial judge considered the belated disclosure, the explanation by the appellant that he did not raise the issue of provocation by

the deceased earlier because nobody had asked him and the evidence PW3 and PW4 and came to the finding that the appellant's assertion that the deceased had stabbed him in the stomach was suspicious. It was Her Ladyship's considered view that if indeed the appellant had lost self-control because the deceased had stabbed him, he would have mentioned it at the first available opportunity. The learned trial judge further found that the medical evidence did not support the appellant's assertion that he was stabbed by the deceased using the knife exh P26(a). On the contrary the learned trial judge found that the presence of the appellant's DNA on the knife P26(a) was more consistent with the appellant using the said knife to stab himself. Her Ladyship was of the view that the wounds on the appellant were self-inflicted and was a suicide attempt. Her Ladyship surmised that the appellant was so incensed when the deceased insisted on a divorce that he decided to kill her first and then kill himself. Having considered the evidence the learned trial judge rejected the defence of grave and sudden provocation.

[15] On the issue of grave and sudden provocation as a defence we can do no better than to reproduce the judgment of Nik Hashim FCJ (as he then was) in the case of *Che Omar Mohd Akhir v Public Prosecutor* [2007] 4 MLJ 309; [2007] 3 CLJ 281 wherein His Lordship said as follows:

> The defence of grave and sudden provocation falls within Exception 1 to s 300 of the PC …
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> … in order to bring the case within the exception it is necessary that the following facts should be established:
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> (i) the offender must have done the act whilst deprived of the power of self-control;
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> (ii) he must have been so deprived by reason of the provocation;
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> (iii) the provocation must have been grave and sudden;
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> (iv) the provocation must not have been sought by the offender;
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> (v) it must not have been voluntarily provoked by the offender as an excuse for doing the act; and
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> (vi) the provocation must not have been given by anything done:
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> (a) either in obedience to the law; or
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> (b) by a public servant in the lawful exercise of his powers as such; or
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> (c) in the lawful exercise of the right of private defence.
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> (see The AIR. Manual, (5th Ed), 1989 p 927)
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> [14] The question whether the provocation was grave and sudden such as to make the accused to lose his self-control is a question of fact and not one of law (see Explanation to Exception 1 to s 300 of the PC; *Kuan Ted Fatt v Public Prosecutor* [1985] 1 CLJ 150; [1985] CLJ (Rep) 174 FC). Each case is to be considered

according to its own facts. The court must decide on the particular circumstances of that case whether the provocation was grave and sudden enough to permit an indulgent view of the crime committed by the accused, (see *Ratanlal & Dhirajlal, The Indian Penal Code,* (29th Ed), 2002 p 1194).

[15] The test of grave and sudden provocation was clearly stated in the Supreme Court case of *Lorensus Tukan v Public Prosecutor* [1988] 1 CLJ 143; [1988] 1 CLJ (Rep) 162. Seah SCJ in delivering the judgment of the court said:

The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control (see *Nanavati v State of Maharashtra* AIR 1962 SC 605, 530).

In determining what amounts to grave and sudden provocation the court may take into account the habits, manners and feelings of the class or community to which the accused belongs, but not of the particular idiosyncracies of the accused:*Madhavan v State of Kerala* AIR 1966 Ker 258 (260).

[16] It is also said that the defence of provocation is a dual one: the alleged provocative conduct must be such as (i) actually causes in the accused, and (ii) might cause in a reasonable man, a sudden and temporary loss of self-control as the result of which he kills the deceased.

[17] Thus, in order to successfully set up provocation as a defence for the reduction of the offence of murder to one of culpable homicide not amounting to murder, it is not enough to show that the accused was provoked into losing his self-control; it must be shown that the provocation was grave and sudden and must have by its gravity and suddenness caused a reasonable man to lose his self-control and induced him to do the act which caused the death of the deceased. In determining that question the court may also consider, along with other factors, the nature of the retaliation by the accused, having regard to the nature of the provocation.

(see *Ratanlal & Dhirajlal*, p 1192; *Vijayan v Public Prosecutor* [1975] 2 MLJ 8; [1975] 1 LNS 189).

[16] The appellant alleged that the deceased stabbed him first and it was this act of grave and sudden provocation that purportedly caused him to lose his self-control and retaliate. We find that even if this allegation was true, the brutal manner in which the appellant retaliated was not proportionate to the provocation. It was in evidence that the deceased was first stabbed in the back. This was injury number 6 which, from the internal examination carried out by PW16, showed that the weapon had penetrated into the right lung and the chest cavity had filled up with blood. PW16 described this injury as fatal. This evidence corroborated the evidence of PW4 who said that he pulled out the knife and put it on the floor. The deceased then fell face down onto the floor. Despite the deceased's condition, the appellant then attacked the deceased again and inflicted the three other fatal injuries (injuries nos 1–2 and 4) which cut the deceased's windpipe and injured the liver causing blood to fill up the deceased's abdomen. We were of the view that the subsequent attack on the

deceased including the stabbing of the deceased's throat when the deceased was obviously incapacitated was clearly out of proportion to the alleged provocation. Having gravely injured the deceased, there was no reason for the appellant to inflict the other fatal injuries. In our considered opinion a reasonable man placed in the situation and circumstances as the appellant was placed would not have acted as the appellant did. We agreed with the learned trial judge that the defence of grave and sudden provocation is a mere afterthought.

[17] We find that the learned trial judge had not erred in fact or in law. Her Ladyship had evaluated the evidence and made findings based on facts placed before her. On a totality of the evidence we were of the unanimous view that the evidence pointed conclusively to the guilt of the appellant. The manner the deceased was attacked, the weapon used and the multiple injuries inflicted on the deceased by the appellant showed a callous disregard for the deceased's life and that the appellant intended to cause the death of the deceased. We find no merit in this appeal. The trial judge was correct in finding the appellant guilty of murder. Therefore we dismissed the appeal and affirmed the conviction and sentence.

Appeal dismissed and conviction and sentence affirmed.

Reported by Kanesh Sundrum